

Internal Revenue Service

memorandum

CC:EE:TR-45-1375-95

Br5:JTRicotta

date: AUG 15 1995

to: Director, Employee Plans Technical and Actuarial Division
(CP:E:EP)

from: Chief, *James Bruckner* Branch 5 (CC:EBEO) Room 5229

subject: [REDACTED]

This responds to your request for technical assistance regarding the taxpayer's eighth ruling request in the above-captioned case as it relates to eligibility for the partial interest exclusion of section 133. The taxpayers have requested numerous rulings concerning their qualified plans in connection with a corporate restructuring in which [REDACTED] and its subsidiaries will be spun-off under section 355 of the Code. Under the spin-off, each shareholder of [REDACTED] common stock, as of the distribution record date, will receive one share of [REDACTED] common stock.

[REDACTED] maintains the [REDACTED] which combines a profit-sharing plan under section 401(a) with a stock bonus and employee stock ownership plan (ESOP) under sections 401(a) and 4975(e)(7). Prior to [REDACTED] the ESOP portion of the [REDACTED] acquired employer securities with a securities acquisition loan (within the meaning of section 133(b)). The Service has issued several favorable determination letters relating to the qualified status of the [REDACTED] under section 401(a) of the Code.

[REDACTED] maintains the [REDACTED] that was adopted on [REDACTED]. As currently amended and restated, the [REDACTED] combines a profit-sharing plan under section 401(a) with a stock bonus and employee stock ownership plan under sections 401(a) and 4975(e)(7). Prior to [REDACTED] the ESOP portion of the [REDACTED] issued notes in order to acquire [REDACTED] securities. [REDACTED] guaranteed the ESOP notes. We assume for purposes of this ruling request that the original ESOP loans were securities acquisition loans (within the meaning of section 133(b)). The Service has issued several favorable determination letters relating to the qualified status of the [REDACTED] under section 401(a) of the Code.

Due to the spin-off transaction, the [REDACTED] and the [REDACTED] as shareholders of [REDACTED] common stock, will receive [REDACTED] shares. No [REDACTED] shares will be required to be surrendered by the [REDACTED] the [REDACTED] or any participant, as a result of the spin-off

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transaction. After the spin-off transaction, [REDACTED] and [REDACTED] will cease to be in the same controlled group of corporations within the meaning of section 414(b), (c), (m) or (o) of the Code, or within the meaning of section 409(l). After the spin-off transaction, it is anticipated that the [REDACTED] will dispose of all its [REDACTED] shares and the [REDACTED] will dispose of all its [REDACTED] shares so that each plan's investment in employer securities will be solely in the common stock of the sponsoring employer.

It is intended that [REDACTED] will be substituted for [REDACTED] as guarantor of the [REDACTED] ESOP notes. Taxpayers represent that there will not be any changes made to any other terms of the ESOP notes (e.g., duration, interest rates, repayment terms, etc.).

The taxpayers have requested a ruling that the substitution of [REDACTED] for [REDACTED] as guarantor of the [REDACTED] ESOP notes will have no impact on the availability of the income exclusion provided under section 133 with respect to the [REDACTED] ESOP notes.

Section 133(a) of the Code provides that gross income does not include fifty percent of the interest received or accrued by (1) a bank (within the meaning of section 581); (2) an insurance company to which subchapter L applies; (3) a corporation actively engaged in the business of lending money; or (4) a regulated investment company (as defined in section 851), with respect to a securities acquisition loan.

A securities acquisition loan is any loan to an ESOP (as defined in section 4975(e)(7)) that qualifies as an exempt loan under sections 54.4975-7 and -11 of the Excise Tax Regulations to the extent that the proceeds are used to acquire employer securities (within the meaning of section 409(l)) for the ESOP. Section 1.133-1T of the Income Tax Regulations, section 133(b)(1).

Therefore, provided that the [REDACTED] ESOP notes were, and continue to be, exempt loans within the meaning of sections 54.4975-7 and -11 of the Excise Tax Regulations, we conclude that the substitution of [REDACTED] for [REDACTED] as guarantor of the [REDACTED] ESOP notes will have no impact on the availability of the income exclusion provided under section 133 with respect to the [REDACTED] ESOP notes.

If you have further questions concerning this case, please contact John Ricotta at 622-6080.